

1 Nicole Lopes, Esq.
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2 Suite B
Woodland Hills, California 91367

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DEVON CHRISTOPHER WENGER.

Defendant.

Case No.: 4:23-CR-00269-JSW-3
Judge: Hon. Jeffrey S. White

**DECLARATION OF NICOLE LOPES IN
RESPONSE TO ATTORNEY BILL SEKI'S
DECLARATION OF APRIL 18, 2025**

I, Nicole Lopes, declare as follows:

1. The facts stated in this declaration are based upon my personal knowledge, except where I indicate they are based on my information and belief, and as to those matters, I believe them to be true.
2. This declaration serves as my response to Bill Seki's declaration of April 18, 2025, pursuant to this Court's Order of April 18, 2025 (Document No. 441).
3. The main reason I was unable to represent Mr. Wenger for the remainder of the trial was because I did not get any meaningful help from Seki Nishimura & Watase, PLC. In particular, I am referring to the month of February 2025. As this Honorable Court has noted, I represented Mr. Wenger satisfactorily in the months before February 2025. But with thousands of pages in exhibits and discovery; nineteen witnesses to prepare for; no help with subpoenas until days before trial and no offer of help regarding approximately twenty trial binders until the evening before trial—even as I

1 worked on short deadlines to prepare/oppose motions and objections to witnesses
2 and exhibits and prepared for cross-examination, opening statements, closing
3 statements, and jury selection, my employer failed to provide me the support I
4 needed and requested.

5 4. I informed Mr. Seki that the prosecution and co-defendants in this case had multiple
6 attorneys and that the case involved multiple defendants, thousands of documents,
7 and many witnesses. Had he given me the help I understood from our
8 communications would be given when I first asked him to allow me to represent Mr.
9 Wenger, I would have never moved for a mistrial. Had he assigned me a second
10 chair—even a part-time one—I believe that I would not have experienced a mental
11 health breakdown that negatively impacted my representation of Mr. Wenger and
12 detrimentally affected my career, my life, and my wellbeing.

13 5. I repeatedly asked for help from Mr. Seki and the managing partner, Joseph
14 Esposito, mostly orally and sometimes in writing. (See, e.g., **Exhibit 1**).
15 6. According to Mr. Seki's profile posted on the website of Seki Nishimura & Watase,
16 PLC, Mr. Seki is a seasoned criminal trial attorney who was employed as a Deputy
17 District Attorney for nine years. I am informed and believe that in that role, Mr. Seki
18 was responsible for prosecuting high profile cases including murder, sexual assault,
19 and public corruption. Based on Mr. Seki's website information, he was also a
20 member of the Special Investigations Division responsible for investigating and
21 prosecuting public officials, including police officers. Based on Mr. Seki's
22 background, I believe Mr. Seki understood the importance of having second chairs in
23 high profile criminal cases.
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Bill Seki Declaration, 2:06-16, Regarding Representation of Mr. Devon Wenger

1 7. In May 2024, I asked Mr. Seki to assign me to Mr. Wenger's case. We discussed the
 2 time commitment to the case, and Mr. Seki told me he could not help at trial,
 3 including because he was not admitted to practice before this Court. However, Mr.
 4 Wenger's case was part of a larger federal investigation into the Antioch Police
 5 Department that had captured the media's attention. For this reason, I explained to
 6 Mr. Seki the dynamics of high-profile criminal trials and my experience in trying
 7 such cases, including the prosecution and defendants being represented by multiple
 8 attorneys; and about how attorneys who were far more experienced than me have a
 9 second chair in high-profile criminal trials. I told Mr. Seki I would need a second
 10 chair and help with trial preparation, if not from Mr. Seki himself, then from
 11 someone else. Both Messrs. Seki and Esposito stated that Mark Montellana, a
 12 second-year civil litigation associate who helped another partner, Kari Kadomatsu,
 13 could be my second chair.
 14

Seki Declaration, 3:01-4:02; Mark Montellana and Ms. Lopes's Request for help

19 8. As I have indicated to this Court, in December 2024, Ms. Kadomatsu, the partner in
 20 charge of approximately sixty civil matters at Mr. Seki's firm, resigned. To the best
 21 of my recollection, either in late December 2024 or early January 2025, Messrs. Seki
 22 and Esposito came to my office and said they were here for my annual review.
 23 During that meeting, they stated that Ms. Kadomatsu's resignation had blindsided
 24 them and that Mr. Montellana could no longer be my second chair in the Wenger
 25 matter because they needed him to work on Ms. Kadomatsu's caseload. I responded
 26 that I needed someone else assigned to help me with Mr. Wenger's case, but they
 27 stated no one was available to help me. Had I known I would not have had a second
 28

1 chair at trial, I would not have asked to represent Mr. Wenger.

2 9. Mr. Seki's did agree to assign Mr. Montellana as my second chair. If he and Mr.
3 Esposito had not agreed, I would not have requested from the Peace Officers
4 Research Association of California or PORAC (insurance carrier for peace officers)
5 to approve Mr. Montellana as my second chair.

6 10. After December 2024, I stopped asking Mr. Montellana to help because Messrs. Seki
7 and Esposito told me that Mr. Montellana could no longer be my second chair. After
8 December 2024, nobody at the firm told me that Mr. Montellana was available to
10 help me for trial.

11 **Seki Declaration, 4:03-08, Regarding "Conversation" Concerning Mr. Montellana**

12 11. My comments on pages 725:24-726:01 of the transcript do not relate to a
13 conversation. The list of items addressed in the transcript reflects my expectations,
14 including based on the work Mr. Montellana performed on the Wenger matter
15 relating to a reply brief and motions in limine in November 2024 through early
16 December 2024.

17 **Seki Declaration, 4:12-17, Regarding My Being Berated and Yelled at**

18 12. In about December 2024, my anxiety and depression escalated due to my heavy
19 workload and the burnout that I began experiencing in July 2024. I informed Mr.
20 Seki of my mental health disabilities. Hoping he would understand, I called him and
21 said my workload was exasperating me. Mr. Seki raised his voice and said, "Maybe
22 you were not meant to be an attorney." He said this in a demeaning tone, and it
23 stunned me.

24 13. After my call with Mr. Seki, I called Mr. Esposito. I was crying when I explained to
25 him what had happened when I spoke to Mr. Seki. Mr. Esposito took Mr. Seki's

1 side, was dismissive, and said he had a class to teach and ended the conversation.

2 **Seki Declaration, 5:22-6:23, Regarding Help With Subpoenas and Trial Binders**

3 14. In January 2025, I first orally asked my legal assistant, Lucy Garcia, to start working
4 on trial binders.

5 15. January 26, 2025, was the date I first asked Ms. Garcia, to prepare witness
6 subpoenas. I provided her with a list of witnesses, as well as a list of the exhibits I
7 intended to use at trial. I followed up by phone, and I did not receive a response from
8 Ms. Garcia. Attached as **Exhibit 2** is a copy of my January 26 email to Ms. Garcia,
9 which I forwarded to Mr. Seki on March 2.

10 16. On February 5, I again emailed Ms. Garcia regarding the subpoenas. (**Exhibit 2**,
11 page 3). I received no response. On February 6, I sent another email, again following
12 up regarding the witness subpoenas. She did not respond to my email until February
13 20, 2025, and then, it was to pose a question rather than to provide the work I had
14 requested be done. (**Exhibit 3**, page 2, top email). I again followed up regarding the
15 subpoenas on February 21 (**Exhibit 2**, page 1) February 25 (**Exhibit 4**, page 1), and
16 February 26 (**Exhibit 4**, pages 2-3).

17 17. Based upon information and belief, Ms. Garcia did not start working on the
18 subpoenas until February 25, 2025. Ms. Garcia emailed me subpoenas on February
19 26, and when I retrieved them on February 27, they were incomplete. (See **Exhibit**
20 **1**, page 2, my text messages to Mr. Esposito).

21 18. Deadline reminders were sometimes sent by Ms. Garcia and I appreciated them
22 when they were sent to me. However, I needed to advise Ms. Garcia about deadlines
23 that I had requested to be placed on the calendar, but that she failed to do. Attached
24 as **Exhibit 5** are two of numerous examples of my reminders to Ms. Garcia in this

1 regard.

2 19. Having received no help from the firm with trial binders, on March 2, 2025—a
 3 Sunday, and the day before trial—I arrived at the office, located in Los Angeles, at
 4 approximately 6:00 a.m. and started working on the trial binders. Two female peace
 5 officers had graciously agreed to assist me with preparing the binders. When I spoke
 6 with Mr. Seki that day, he stated he was with his daughter and that, if I wanted, he
 7 could come to the office for a couple of hours to help me with the binders. I stated to
 8 him that two of my friends had kindly volunteered to help me.

9 20. At no time did Mr. Seki mention that Ms. Garcia, who I had previously asked to help
 10 work on the trial binders, would (on a Sunday) be able to help me. I worked from
 11 approximately 6:00 a.m. to close to midnight, partially completed the trial binders,
 12 and left Los Angeles around midnight directly for Oakland, arriving there at
 13 approximately 6:45 a.m. for the first day of trial, commencing at 7:30 a.m.

14 **Seki Declaration, 6:24-7:10, Effect of Partner Resignation on my Workload**

15 21. As reflected at page 713:01-09 of the transcript, dated March 5, 2025, I stated to the
 16 Court that the two civil and criminal practice groups of the firm are separate and are
 17 generally handled by separate attorneys. My workload was primarily related to
 18 criminal matters.

19 22. As reflected at pages 713:19-714:08 of the March 5, 2025 transcript, the resignation
 20 of Mr. Seki's partner impacted Mark Montellana's workload directly. It impacted
 21 my trial preparation for Mr. Wenger's case indirectly because shortly after the
 22 partner in question resigned, during my annual review, Messrs. Seki and Esposito
 23 informed me that Mr. Montellana could no longer assist me.

Seki Declaration, 7:11-8:04, Regarding Billable Hours and Trevor Kirk Case

23. As reflected at pages 727:12-728:03 of the March 5, 2025 transcript, I was involved in the Trevor Kirk matter and was assigned as the trial attorney for that case. (See, e.g., captions on documents at **Exhibit 6**). I ultimately did not try that case and, in January 2025, stopped representing Mr. Kirk. To the extent the transcript at page 732:02-03 indicates that I tried Mr. Kirk's case, I misspoke and meant that I was assigned to try Mr. Kirk's case. I was very emotional on March 5, 2025, and would never intentionally misrepresent a fact to this Court.

24. As to my billable hours, neither Mr. Seki nor anyone else at his firm indicated to me that my “billable” hours were low or that I was not working hard enough. In fact, I received thanks from Mr. Seki for referring high-profile cases to them, which they in turn referred out to other firms and earned and are in the process of earning a substantial profit.

25. I did not have a billable hour requirement for the criminal matters I handled. Upon information and belief, the firm represented criminal matters based on a flat fee rate.

26. At the time I was representing Mr. Wenger, I was also assigned as trial counsel for another nine cases. Attached as **Exhibit 7** is my email of December 10, 2024 to Mr. Seki regarding my trial calendar.

Seki Declaration, 8:05-20, Regarding Police Involved Shootings, Court Appearances, and

Mr. Seki's Impressions

27. As reflected at pages 733:16-734:12 of the March 5, 2025 transcript, I mentioned police involved shooting incidents as an example of one of my responsibilities as an attorney at Mr. Seki's firm. I did not state that my representation of clients involving police shootings impeded my trial preparation in Mr. Wenger's case.

1 28. Regarding my comments that “I’m usually in court every morning” and “in the
2 afternoon as an IA interviewer,” (March 5, 2025 transcript, 750:12-15), by “usually”
3 I did not mean my entire career, but in recent times. On March 5, I was very
4 emotional and am deeply sorry and profusely apologize for not being more specific
5 regarding these comments.
6

7 29. I believed I expressed clearly to Messrs. Seki and Esposito that I was in the trenches
8 and needed another attorney’s help. I felt generally ignored until March 2025, after
9 this Court contacted Mr. Seki.
10

11 30. I told Mr. Seki, for instance, that after the original discovery deadline of May 2024,
12 the government had sent voluminous discovery—on November 19, 25, 26;
13 December 4; January 3, 22, 31; and February 12, 20, 25. I also told him that the
14 government was seeking to introduce over 900 exhibits and that, pursuant to
15 Paragraph 20 of this Court’s Standing Order, each day during trial all counsel were
16 required to exchange a list of witnesses and exhibits to be used for each witness and
17 that counsel only had twenty-four hours to object to such notice and provide their
18 own list of exhibits for cross-examination purposes. Given this, I feel confident that I
19 was not provided the necessary support or even similar support that the government
20 lawyers had available to them.
21

22 31. Exhibits 1 through 7 attached to this declaration are true copies and incorporated
23 herein by this reference. Said exhibits were either sent to me or received by me on
24 the dates reflected on the exhibits. Yellow highlights have been added for ease of
25 reference. Black marks indicate redactions.
26

27 //
28 //

1 I declare under penalty of perjury under the laws of the state of California that the facts
2 stated in this declaration are true. Executed on this 2nd day of May 2025, in Los Angeles,
3 California.

4

5 By: Nicole Lopes
6 Nicole Lopes

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EXHIBIT 1

From: Nicole Lopes
Sent: Monday, November 11, 2024 1:14 PM
To: Joseph Esposito <jesposito@snw-law.com>
Cc: Bill Seki <bseki@snw-law.com>
Subject: Case Load
Importance: High

Hi Bill & Joey:

I took some time to sit down and write out my current trial schedule, Board of Rights schedule, civil case list and criminal case list. I did not include any of my administrative cases with LAPPL or PORAC as it would take too much time to compile a list of them.

I want to let you know that I very much need help. I feel like I can't litigate these matters as they should be - given that I'm always in court or an IA and then my litigation of my criminal and civil cases. In light of the work load, I do not think I can litigate these cases competently. I regularly work nights and weekends to play catch up for the time I miss at my desk when I'm in hearings.

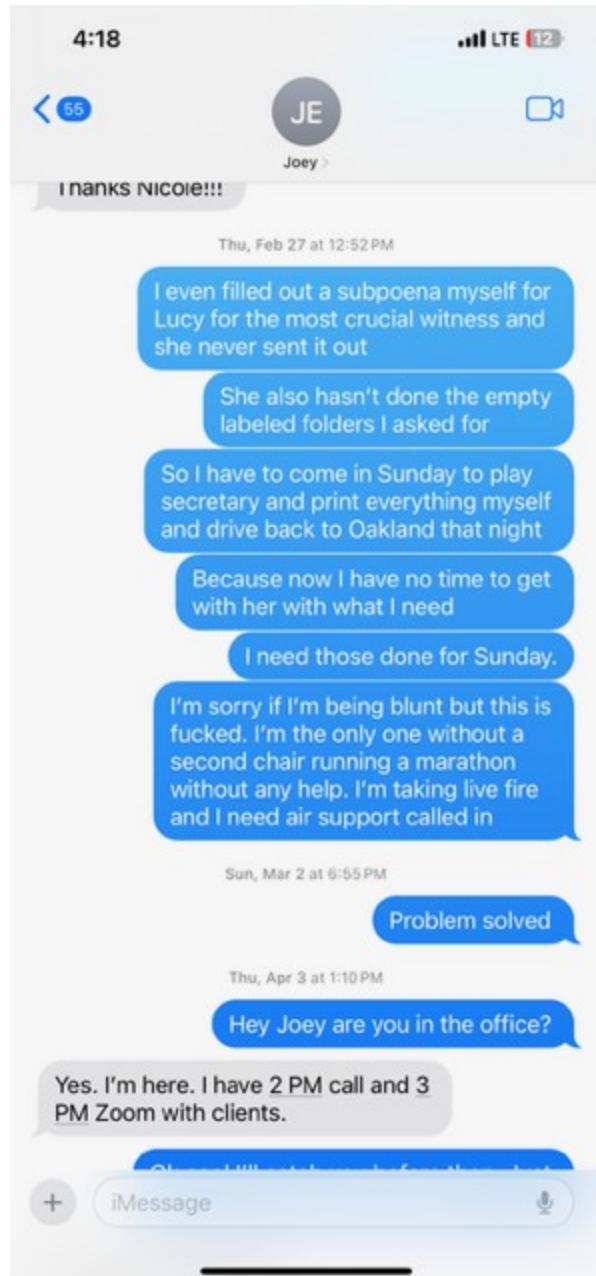
This is no longer tenable for me. It is impacting my mental health, my physical health and time with my family. I was originally hired to do criminal and administrative work, but now I am also carrying a roster of heavy high profile civil cases as well.

I am ready willing and able to be the firm's trial attorney, but in order to do so we need to hire another associate as soon as possible.

I know I am not a partner but I am the only one willing to do the trial work and I really need the support of someone I can trust with smaller items while I focus on the tougher motions, court appearances and strategy.

I know we have each discussed this individually, but I firmly believe we are at a point where something needs to give one way or another for the well being of me and the clients.

Nicole (Castronovo) Lopes
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From: Nicole Lopes

Sent: Wednesday, February 26, 2025 5:15 PM

To: Bill Seki <bseki@snw-law.com>; Joseph Esposito <jesposito@snw-law.com>

Subject: Wenger - Jury Subpoenas/Jury Binders

Importance: High

Bill and Joey:

Its 5pm and we have a jury. I have asked Lucy to prepare subpoenas for weeks and they have not been done. I have also asked for binders to be created for my 19 witnesses which I need to pick up before I travel to trial Monday. They have not been done.

I don't know if we need to grab another assistant to help her get these things done. There are two days left to accomplish these tasks and the court stated explicitly that there will be no delays if witnesses aren't ready. Please help its about as urgent as it gets.

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EXHIBIT 2

From: Nicole Lopes
Sent: Sunday, March 2, 2025 3:48 PM
To: Joseph Esposito <jesposito@snw-law.com>; Bill Seki <bseki@snw-law.com>; Erika Chan <Echan@snw-law.com>
Subject: Subpoenas Were Asked for in January
Importance: Low

See the witness list below.

From: Nicole Lopes
Sent: Sunday, January 26, 2025 12:56 PM
To: Lucy Garcia <lgarcia@snw-law.com>
Subject: FW: US v. Amiri, et al., 23-CR-269 - Oppositions to Defendant Amiri's Motions in Limine

Hi Lucy:

We need to do subpoenas for the below witnesses. We will also need to subpoena documents from some of them. We need to try to get these to our investigator next week.

Thanks!

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From: Nicole Lopes
Sent: Sunday, January 26, 2025 10:53 AM
To: Janelle Crandell <Janelle@grtlaw.com>; Krishnamurthy, Ajay (USACAN) <Ajay.Krishnamurthy@usdoj.gov>; Paul Goyette <paul@grtlaw.com>
Cc: Shepard, Alexandra (USACAN) <Alexandra.Shepard@usdoj.gov>; Sargent, Alethea (USACAN) <Alethea.Sargent@usdoj.gov>; Cheng, Eric (USACAN) <Eric.Cheng@usdoj.gov>
Subject: RE: US v. Amiri, et al., 23-CR-269 - Oppositions to Defendant Amiri's Motions in Limine

Hi All:

Here are my requested changes to the below:

- Stipulated Verdict Form – Please remove Bill Seki as an attorney of record
- Joint Proposed Voir Dire – I would request the following be added:
 - Have you had any experience with law enforcement?
 - Have you supported any associations which support law enforcement? Or defund the police?
 - Have you had any training in law enforcement?
 - Have you had any legal training?
- Joint Pretrial Conference Order
 - Witnesses:
 - Sgt. Gary Lowther
 - Don Noble
 - Mike Rains
 - Julia Fox
 - Larry Wallace
 - Matthew Ernst
 - Josh Evans
 - Jonathan Adams
 - Scott Rice
 - Ryan Duff
 - Darryl Brian
 - Nicholas Shiplov
 - Matthew Nutt
 - Erik Nielson
 - Shane Cole
 - Arturo Becerra
 - Kristian Palma
 - Patrick Mayer
 - James Colley
 - Brittany Thorpe
 - Ana Cortez
 - Patrick Wentz
 - Rick Hoffman
 - Karen Kramer
 - Mark Lillienfeld
- Stipulation Re: Business Records – will agree to stipulations
- Exhibit List
 - IA Records pertaining to Dajon Smith
 - IA records pertaining to 404 uses of force
 - IOD Records
 - FBI Interview – Wenger
 - FBI Interview – Rombough
 - FBI Interview – Karen Kramer

I will send the jury instruction changes under separate cover. I agree with the changes made by Ms. Crandell to both the statement of the case and the special jury instruction.

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 Suite 1250

From: Nicole Lopes
Sent: Wednesday, February 5, 2025 2:13 PM
To: Lucy Garcia <lgarcia@snw-law.com>
Cc: mark lillienfeld <marklee1494@gmail.com>
Subject: Wenger - Subpoenas
Importance: High

Hi Lucy:

What's the status of the subpoenas? Can you send them to Mark by the end of the week?

Thanks!

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EXHIBIT 3

From: Nicole Lopes
Sent: Friday, February 21, 2025 1:22 AM

To: Lucy Garcia <lgarcia@snw-law.com>
Subject: RE: Wenger - Subpoenas
Importance: High

Hey lady:

Can we do a call at 9am tomorrow so I can get with you on the subpoenas? Mark is flying up either Sunday or Monday so I need to get them to him to serve.

Nicole Lopes

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From: Lucy Garcia <lgarcia@snw-law.com>
Sent: Thursday, February 20, 2025 12:11 PM
To: Nicole Lopes <nlopes@snw-law.com>
Subject: FW: Wenger - Subpoenas
Importance: High

This one?

Lucy Garcia, Legal Assistant

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From: Nicole Lopes <nlopes@snw-law.com>
Sent: Thursday, February 6, 2025 12:52 PM
To: mark lillienfeld <marklee1494@gmail.com>
Cc: Devon Wenger <dcwg10@gmail.com>; Lucy Garcia <lgarcia@snw-law.com>
Subject: Wenger - Subpoenas
Importance: High

Hi Mark:

Below is the final working list of who we are actually going to subpoena for trial. I've cc'd Devon here so he can provide you with contact information for the friendlies – we could get them to agree to email service if they promise to appear. If not we have to serve them the old fashioned way.

Hi Lucy:

I will send you the list of subpoenas with documents etc, under separate cover.

Gary Lowther (APD)

Larry Wallace (Contra Costa DA)

Matthew Ernst (FBI – SF Swat Team)

Josh Evans (APD – unsure of whether he's fired or not)

Scott Rice (civilian – Allen victim)

Ryan Duff (APD)

Darryl Brian (PI)

Nicholas Shiplov (APD)

Matthew Nutt (APD)

Erik Nielson (APD)

Shane Cole (APD)

Arturo Becerra (APD)

Kristian Palma (APD)

Patrick Mayer (APD)

James Colley (former APD)

Brittany Thorpe (Civilian)

Ana Cortez (City of Antioch)

Patrick Wentz (Pittsburgh PD)

Karen Kramer

Nicole Lopes

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EXHIBIT 4

From: Nicole Lopes
Sent: Tuesday, February 25, 2025 2:24 PM
To: Lucy Garcia <lucy.garcia@snw-law.com>
Subject: Subpoenas
Importance: High

My phone just died because I've been on back to back calls with experts. Can you just email me what the deal is with the subpoenas? If not I'll call you once it starts up again.

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From: Nicole Lopes
Sent: Wednesday, February 26, 2025 5:01 PM
To: Lucy Garcia <lgarcia@snw-law.com>
Cc: Bill Seki <bseki@snw-law.com>

Subject: RE: Wenger; 2025-02-13; (DRAFT) Statement of Nicole R. Castronovo re MIL 3

Importance: High

Hi Lucy:

I was up all night working on prep for jury selection and did not have time to get the subpoenas done. That's why I sent the earlier email to you this morning with the link of the downloaded subpoenas and asked that it be completed today. You replied you would do it after the filing for Bill. I need these done today.

Trial starts Monday and Mark needs to travel up here to serve everyone before Monday. This can't sit on the back burner right now.

Thank you!

Nicole Lopes

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From: Lucy Garcia <lgarcia@snw-law.com>
Sent: Wednesday, February 26, 2025 4:57 PM
To: Nicole Lopes <nlopes@snw-law.com>
Cc: Bill Seki <bseki@snw-law.com>
Subject: RE: Wenger; 2025-02-13; (DRAFT) Statement of Nicole R. Castronovo re MIL 3

Hi Nicole,

When we talked yesterday, you mentioned you were going to work on them last night. You downloaded the signed ones.

Lucy Garcia, Legal Assistant

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From: Nicole Lopes <nlopes@snw-law.com>
Sent: Wednesday, February 26, 2025 4:52 PM
To: Lucy Garcia <lgarcia@snw-law.com>
Cc: Bill Seki <bseki@snw-law.com>
Subject: RE: Wenger; 2025-02-13; (DRAFT) Statement of Nicole R. Castronovo re MIL 3

We just finished selecting a jury. What's the status on the subpoenas?

Nicole Lopes

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EXHIBIT 5

From: Nicole Lopes
Sent: Sunday, January 26, 2025 3:03 PM
To: Lucy Garcia <lgarcia@snw-law.com>
Subject: Criminal Case List

Hi Lucy:

We really need to update the criminal case list/calendar. We don't have [REDACTED] next date – can you please look it up and calendar?

We can delete [REDACTED] from the list as their cases are closed. I believe we can take [REDACTED] off too.

We are missing a few cases as well, [REDACTED].

We need new dates calendared for the following too: [REDACTED] We don't have their upcoming court dates on the list.

Thanks!

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From: Nicole Lopes
Sent: Wednesday, January 15, 2025 5:03 PM
To: Lucy Garcia <lgarcia@snw-law.com>
Subject: FW: U.S. Amiri, et al., 23-CR-269 MIL

Hi Lucy:

Couple questions—

- I don't see February 10, 2025 on the calendar for hearings. Can you check Pacer and make sure we have all the dates calendared?
- Amiri's counsel made reference to the government's exhibit list – can you please tell me where this is saved?
- Can you save the attached?

Thanks!

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From: Janelle Crandell <Janelle@grtlaw.com>
Sent: Wednesday, January 15, 2025 4:56 PM
To: Cheng, Eric (USACAN) <Eric.Cheng@usdoj.gov>; Krishnamurthy, Ajay (USACAN) <Ajay.Krishnamurthy@usdoj.gov>; alexandra.shepard@usdoj.gov; Sargent, Alethea (USACAN) <Alethea.Sargent@usdoj.gov>
Cc: Paul Goyette <paul@grtlaw.com>; Gabby Turnbull <Gabby@grtlaw.com>; Nicole Lopes <nlopes@snw-law.com>
Subject: U.S. Amiri, et al., 23-CR-269 MIL

Counsel,

Please see attached:

1. Defendant Amiri's Motion in Limine 1: Motion to Exclude Co-Conspirator Statements;
2. Defendant Amiri's Motion in Limine 2: Motion to Exclude Inflammatory Language;

3. Defendant Amiri's Motion in Limine 3: Motion to Exclude Termination and Employment Status;
4. Defendant Amiri's Motion in Limine 4: Motion to Exclude Prior Conviction.

Thank you,

Janelle F. Crandell

Attorney

Goyette, Ruano & Thompson

2366 Gold Meadow Way, Suite 200 | Gold River, CA 95670

E: Janelle@grtlaw.com | **W:** www.grtlaw.com

O: 916-851-1900 | **F:** 916-851-1995



PRIVILEGE AND CONFIDENTIALITY NOTICE

The information in this electronic mail is intended for named recipients only. It may contain privileged or confidential matter. If you are not the intended recipient or have received this electronic message in error, you are hereby: (1) notified that any dissemination of this communication is strictly prohibited and (2) requested to: (a) notify the sender by telephone or by electronic mail and (b) permanently delete all electronic copies of this message and its attachments, and destroy any hard copies you may have created.

EXHIBIT 6

GILBERT M. NISHIMURA (SBN 57905)
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JANET L. KEUPER (SBN 128417)
jkeuper@snw-law.com
NICOLE R. CASTRONOVO (SBN 314585)
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SEKI, NISHIMURA & WATASE, PLC
600 Wilshire Boulevard, Suite 1250
Los Angeles, California 90017
Tel.: (213) 481-2869 | Fax: (213) 481-2871

Attorneys for Defendant DEPUTY TREVOR KIRK

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

JACY HOUSSETON and DAMON BARNES.

Plaintiffs,

vs.

COUNTY OF LOS ANGELES,
SHERIFF ROBERT LUNA, DEP.
TREVOR KIRK, WINCO FOODS,
LLC, a Delaware limited liability
company, and WINCO HOLDINGS,
INC., an Idaho corporation, individually
and in their official capacities and
DOES 1-10, inclusive.

Defendants.

Case No. 2:23-cv-06887-SVW-MRW

(Hon. Stephen V. Wilson)

**DEFENDANT TREVOR KIRK'S
RESPONSE TO PLAINTIFFS'
SEPARATE STATEMENT OF
UNCONTROVERTED
MATERIAL FACTS**

[Filed concurrently with Reply to Plaintiff's Opposition to Motion of Defendant Trevor Kirk for Summary Judgment on Claim of Jacy Houseton; Declaration of Janet L. Keuper; Objection to Declaration and Evidenced Submitted in Opposition to Motion of Defendant Deputy Trevor Kirk for Summary Judgment]

1 Date: December 2, 2024
2 Time: 1:30 p.m.
3 Location: 350 W. First Street
4 Los Angeles, CA 90012
Courtroom: 10A
5 Jury Trial: February 18, 2025
6 Action Filed: August 22, 2023
7

8 Pursuant to Federal Rule of Civil Procedure 56, Defendant Trevor Kirk
9 (“Defendant”), submits this Response to Plaintiff’s Statement of Facts and
10 Conclusions of Law.

11

12 **RESPONSE TO PLAINTIFF’S UNCONVERTED FACTS**

No.	MATERIAL FACT	RESPONSE
1.	On September 4, 2024, Defendant TREVOR KIRK was criminally indicted in the matter United States of America v. Trevor James Kirk, Case No. 2:24-cr-00527-SVW.	Undisputed that there was an indictment. Objection. Irrelevant to the issues of this motion. <u>Supporting Evidence</u> Federal Rules of Evidence (“FRE”) 402 Exhibit 5
2.	The basis for Defendant KIRK’s criminal indicted is for violating Plaintiff HOUSSETON’s civil rights.	Objection. Irrelevant to the issues of this motion. An indictment is not evidence of any fact. <u>Supporting Evidence</u> FRE 402 Exhibit 5
3.	Defendant KIRK used excessive force in Plaintiff HOUSSETON while also violating her rights under state law causing her bodily harm.	Disputed. Objection. Purported evidence not authenticated and lacks foundation. Irrelevant to the issues of this motion as the requests have been deemed

RESPONSE TO PLAINTIFF'S UNCONVERTED FACTS		
No.	MATERIAL FACT	RESPONSE
	<p>Supporting Evidence Exhibit 10</p>	admitted and contrary evidence cannot be considered. <p>Supporting Evidence FRE 402; FRE 104</p>
4.	On January 29, 2024, Plaintiff JACY HOUSSETON served, through her counsel of record, Requests for Admissions to Defendant TREVOR KIRK via Federal Express.	Undisputed.
	<p>Supporting Evidence Exhibit 7, 8</p>	
5.	On February 8, 2024, Defendant TREVOR KIRK untimely responded to Plaintiff JACY HOUSSETON Requests for Admissions to Defendant TREVOR KIRK via electronic service.	Disputed. The timely responses of defendant Kirk to Requests for Admissions were served via email on February 28, 2024.
	<p>Supporting Evidence Exhibit 7, 8</p>	<p>Supporting Evidence Plaintiff's Exhibit 8; Docket 100 to 100-1 to 100-22.</p>
6.	Given that Defendant KIRK failed to timely respond to Plaintiff's Requests for Admissions, Defendant KIRK made the following admissions: <ol style="list-style-type: none">1. Admit that YOU were working in your capacity as a sworn Sheriffs' deputy on the date of the INCIDENT.2. Admit that YOU responded	Disputed. The timely responses of defendant Kirk to Requests for Admissions were served via email on February 28, 2024. The issue was the subject of a motion for relief by Kirk on grounds that timely responses were served, but were served via email rather than USPS. [Docket 100, 100-1 to 100-22]

RESPONSE TO PLAINTIFF'S UNCONVERTED FACTS

No.	MATERIAL FACT	RESPONSE
3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27	<p>to the WINCO in Lancaster.</p> <p>3. Admit that YOU have a tattoo on your right forearm.</p> <p>4. Admit that YOU did not personally contact WinCo personnel before contacting PLAINTIFFS.</p> <p>5. Admit that YOU have a tattoo on your ankle.</p> <p>6. Admit that YOU were involved in an officer-involved shooting</p> <p>7. Admit that YOU are in a gang.</p> <p>8. Admit that YOU were in the military.</p> <p>9. Admit that YOU were disciplined while in the military.</p> <p>10. Admit that YOU have no Black friends.</p> <p>11. Admit that YOU were taught to only use force reasonably necessary to affect an arrest of a suspect.</p> <p>12. Admit that YOU felt JACY HOUSETON had no right to film you.</p> <p>13. Admit that YOU believe citizens should not film the police.</p> <p>14. Admit that JACY HOUSETON had a right to film you in the WinCo parking lot on the date of the INCIDENT.</p>	<p><u>Supporting Evidence</u></p> <p>Exhibit 8 to Plaintiff's Dec. in Opposition; Docket 100 to 100-1 to 100-22; Docket 147; Docket 160</p>

RESPONSE TO PLAINTIFF'S UNCONVERTED FACTS

No.	MATERIAL FACT	RESPONSE
3	15. Admit that YOU have never detained a citizen for filming while you have been a deputy with LASD.	
4	16. Admit that YOU received training to handle citizens who film the police.	
5	17. Admit that YOU never received training about dealing with citizens who filmed police.	
6	18. Admit that YOU did not know if JACY HOUSSETON had been inside WINCO when you contacted her in the parking lot.	
7	19. Admit that YOU threatened to punch JACY HOUSSETON on the date of the INCIDENT.	
8	20. Admit that YOU punched JACY HOUSSETON on the date of the INCIDENT.	
9	21. Admit that YOU pepper-sprayed JACY HOUSSETON on the date of the INCIDENT.	
10	22. Admit that YOU arrested JACY HOUSSETON on the date of the incident.	
11	23. Admit that YOU handcuffed JACY HOUSSETON on the date of the INCIDENT.	
12	24. Admit that YOU taught proper handcuffing techniques at the police	
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RESPONSE TO PLAINTIFF'S UNCONVERTED FACTS		
No.	MATERIAL FACT	RESPONSE
	<p>academy you attended.</p> <p>25. Admit that YOU were taught proper handcuffing techniques by LASD instructors.</p> <p>26. Admit that YOU incorrectly handcuffed DAMON BARNES.</p> <p>27. Admit that YOU incorrectly handcuffed JACY HOUSETON.</p> <p>28. Admit that YOU never saw PLAINTIFFS in possession of any weapon on the date of the INCIDENT.</p> <p>29. Admit that citizens are allowed to film police.</p> <p>30. Admit that no WinCo employee identified DAMON BARNES before you placed handcuffs on him.</p>	
	<p><u>Supporting Evidence</u></p> <p>Exhibit 7, 8</p>	
7.	<p>Defendant KIRK's admissions to Plaintiff's RFAs were the subject of Defendant KIRK's own motion for relief which was denied by Hon. Judge Wilner because Plaintiff filed a motion in limine to have the RFAs deemed admitted. <i>See</i> Dkts. 147, 160.</p>	<p>Disputed. Judge Wilner stated in his Order that the issue had been presented separately in a motion <i>in limine</i>, and Judge Wilner declined to interfere with the district judge's pretrial preparation. Judge Wilner did not deny the motion.</p> <p><u>Supporting Evidence</u></p> <p>Docket 160</p>
	<p><u>Supporting Evidence</u></p> <p>Exhibit 7, 8</p>	

1
2 Dated: November 18, 2024
3

Respectfully Submitted,
SEKI, NISHIMURA & WATASE, PLC

4 By: /s/ JANET L. KEUPER
5 JANET L. KEUPER
6 NICOLE R. CASTRONOVO
7 Attorneys for Defendant,
8 DEPUTY TREVOR KIRK
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9 Los Angeles, California 90017
10 Tel.: (213) 481-2869 | Fax: (213) 481-2871

11 Attorneys for Defendant DEPUTY TREVOR KIRK

12 **UNITED STATES DISTRICT COURT**

13 **CENTRAL DISTRICT OF CALIFORNIA**

14 JACY HOUSSETON and DAMON
15 BARNES,

16 Plaintiffs,

17 vs.

18 COUNTY OF LOS ANGELES,
19 SHERIFF ROBERT LUNA, DEP.
20 TREVOR KIRK, WINCO FOODS,
21 LLC, a Delaware limited liability
22 company, and WINCO HOLDINGS,
23 INC., an Idaho corporation, individually
24 and in their official capacities and
DOES 1-10, inclusive,

Defendants.

Case No. 2:23-cv-06887-SVW-MRW

(Hon. Stephen V. Wilson)

**DEFENDANT DEPUTY TREVOR
KIRK'S EXPERT WITNESS
DISCLOSURE UNDER FEDERAL
RULES OF CIVIL PROCEDURE,
RULE 26**

PRE-TRIAL CONF: 2//25
JURY TRIAL: 2/18/25**

Action Filed: August 22, 2023

TO ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF
RECORD:

///

1 PLEASE TAKE NOTICE that defendant, DEPUTY TREVOR KIRK,
2 hereby provides his disclosure of expert witnesses pursuant to *Federal Rules of*
3 *Civil Procedure*, Rule 26 of the Federal Rules of Civil Procedure.

4 **I. RETAINED EXPERTS**

5 Defendant anticipates that he will present evidence under the *Federal Rules*
6 *of Evidence*, Rules 702, 703, or 705 by way of the following retained experts:

7 **1. James W. Borden, C.I.R. Consultants, 3870 E. Flamingo Road,**
8 **Suite 511, Las Vegas, NV 89121**

9 James W. Borden is an expert in police performance dynamics as they
10 pertain to use of force decision-making and reaction timing. His expertise is in
11 police practices, policy, training, and forensic video analysis pertaining to the use
12 of force in courts across California and other states. He is a member of the
13 California Force Instructors Association and actively trains its members and he
14 has been appointed as a training consultant by the California Department of
15 Justice (Cal DOJ) for force incident review and analysis. He also provides case
16 analysis services for the Law Enforcement Legal Defense Fund (LELDF) in
17 Washington DC, and he has acted as an expert witness on multiple use-of-force
18 cases with the Federal Department of Justice (DOJ). For further details regarding
19 the qualifications of Mr. Borden, see the attached curriculum vitae attached to this
20 Designation.

21 Attached to this Disclosure are the following documents, which are
22 provided on the enclosed flash drive:

23 **1. Rule 26 Report Incident Review and Analysis prepared by**
24 **James Borden;**
25 **2. Current Curriculum Vitae of James Borden;**
26 **3. List of Cases of James Borden;**

1 4. Fee Schedule Agreement. Mr. Borden's fees for deposition
2 testimony given online from his office are \$300.00 per hour, with a
3 four- hour minimum. For additional details regarding the fees for
4 Mr. Borden, see attached Fee Schedule Agreement.

5 2. **Robert McFarlane, Digital FVA, LLC, 16027 Redington Drive**
6 Redington Beach, FL 33708

7 Defendant anticipates that he will present evidence under the *Federal Rules*
8 *of Evidence*, Rules 702, 703, or 705 by way of the following retained experts:

9 Since 2016, Robert McFarlane has been qualified to testify as an expert
10 witness in state and federal courts as a forensic video analyst in the jurisdictions of
11 AZ, CA, TX, and MI. In addition to providing expert testimony, many of his
12 exhibits and reports have been accepted and admitted as evidence without
13 testimony. For a decade prior to his expert work in the field of forensic video
14 analysis, Robert was a private investigator specializing in complex matters
15 including serious criminal cases and high-profile disciplinary actions. In addition
16 to private-sector investigative experience, Robert has twelve years of law
17 enforcement experience with the Oakland, CA Police Department as a patrolman,
18 undercover narcotics detective and street-level drug enforcement officer. For
19 further details regarding the qualifications of Mr. McFarlane, see the attached
20 curriculum vitae attached to this Designation.

21 Attached to this Disclosure are the following documents, which are
22 provided on the enclosed flash drive:

23 1. Rule 26 Report Incident Review and Analysis prepared by Mr.
24 Robert McFarlane.
25 2. Current Curriculum Vitae of Robert McFarlane;
26 3. List of Cases of Robert McFarlane contained in his CV;

4. Fee Schedule Agreement. Mr. McFarlane's fees for deposition testimony given online from his office are \$ 235.00 per hour, and \$285.00. For additional details regarding the fees for Mr. McFarlane, see attached Fee Schedule Agreement.

II. RESERVATION OF RIGHTS

Defendant reserves the right to elicit expert witness testimony from any expert designated by any other party in this case. Defendant further reserves the right to designate further experts as may be required as a result of discovery which takes place after the designation date.

Defendant reserves the right to supplement this disclosure per Federal Rules of Civil Procedure, Rule 26(e)(1).

Defendant reserves the right to elicit testimony regarding Plaintiff's injuries, medical conditions, prognosis, and/or treatment from non-retained experts and healthcare providers.

Further, should new allegations or contentions be made, Defendant reserves the right to nominate and to call at the time of trial such further experts as Defendant may deem advisable or appropriate.

Dated: November 20, 2024 SEKI, NISHIMURA & WATASE, PLC

By: /s/ JANET L. KEUPER
JANET L. KEUPER
NICOLE R. CASTRONOVO
Attorneys for Defendant
DEPUTY TREVOR KIRK

EXHIBIT 7

From: Nicole Lopes
Sent: Tuesday, December 10, 2024 10:17 AM
To: Bill Seki <bseki@snw-law.com>
Cc: Lucy Garcia <lgarcia@snw-law.com>
Subject: Wenger - Motion to Continue Trial Denied

Hi All:

The court denied my motion to continue Wenger.

So below is my new trial schedule/Board of Rights Schedule.

Case Name	Court	Type	Trial Date
[REDACTED]	Lancaster	Criminal	December 30, 2024 – Motion to Withdraw
[REDACTED]	Bellflower	Criminal	TBD – May be dismissed
Houseton, Jacey	Federal (DTLA)	Civil	February 18, 2025
Wenger, Devon	Federal (Oakland)	Criminal	March 3, 2025
[REDACTED]	Norwalk	Civil	April 14, 2025
[REDACTED]	Norwalk	Civil	June 3, 2025

Case Name	Location	Type	Date
[REDACTED]	DTLA	LAPPL	February 4, 2025
[REDACTED]	DTLA	LAPPL	January 13,14,15,16 – will speak to client about moving
[REDACTED]	DTLA	LAPPL	January 21, 22, 23, 24 – working on moving this to March
[REDACTED]	DTLA	LAPPL	January 17, March 17, March 24

Nicole (Castronovo) Lopes
Attorney at Law
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